



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

915 2<sup>ND</sup> AVE., SUITE 3310  
SEATTLE, WA 98174-1099

REGION X  
ALASKA  
AMERICAN SAMOA  
GUAM  
HAWAII  
IDAHO  
MONTANA  
NEVADA  
NORTHERN MARIANA  
ISLANDS  
OREGON  
WASHINGTON

April 9, 2019

Ms. Christina Kishimoto  
Superintendent  
Hawaii State Department of Education  
P.O. Box 2360  
Honolulu, Hawaii 96804

Re: Hawaii State Department of Education  
OCR Reference No. 10121037

Dear Ms. Kishimoto:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Hawaii State Department of Education (HIDOE) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complainant alleged that HIDOE discriminates against English Language Learner (ELL) students and limited-English proficient (LEP) parents at Kealakehe High School (high school) on the basis of national origin by:

1. failing to provide ELL students with an appropriate alternative language services program and support to meet their English-language needs;
2. failing to provide ELL students with access to the full range of courses that are offered to non-ELL students;
3. failing to exit ELL students, who have obtained English-language proficiency, from the alternative language program; and
4. failing to communicate with LEP parents regarding their children's education in a language that they understand.

As explained below, prior to completion of OCR's investigation, HIDOE expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegations.

OCR investigated this case under the authority of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation, which prohibit discrimination on the bases of race, color, and national origin in programs and activities that receive federal financial assistance. HIDOE is a recipient of federal financial assistance from the Department and is therefore subject to Title VI.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

The Title VI regulation, at 34 C.F.R. §§ 100.3(a) and (b)(i)-(ii), provides that a recipient of federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin, exclude persons from participation in its programs, deny them any service or the benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others.

The investigation to date indicated that HIDOE may not be following its procedures with respect to placing students in the ELL program at the high school, resulting in some students who need services not receiving them, other students not receiving appropriate services based on their proficiency level, and still other students remaining in the program despite demonstrating English proficiency. OCR also identified a concern regarding whether teachers who are responsible for providing ELL services have knowledge and training to appropriately implement ELL services. The information also shows that students in the ELL program at the high school may not be provided meaningful access to courses that are required for graduation. In addition, OCR identified a concern that limited-English proficient parents may not be receiving meaningful communication from HIDOE in a language they understand.

In accordance with Section 302 of the *OCR Case Processing Manual*, a complaint may be resolved at any time when, prior to the point when OCR issues a final determination, the recipient expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement. In this case, HIDOE requested to resolve the complaint prior to the conclusion of OCR's investigation. In light of HIDOE's willingness to address the concerns identified by OCR comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate. Subsequent discussions with HIDOE resulted in HIDOE signing the enclosed agreement.

This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determination.

Please be advised that HIDOE may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Page 3 – OCR Reference No. 10121037

OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by June 3, 2019.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Mark Farr, Senior Equal Opportunity Specialist, at (206) 607-1607 or mark.farr@ed.gov, or David Kauffman, Attorney, at (206) 607-16073 or david.kauffman@ed.gov.

Sincerely,

Sukien Luu  
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement